

BEFORE THE  
TENNESSEE STATE BOARD OF EQUALIZATION

<i>In Re:</i>	Libreria Cristina Monte Horeb	)	
	District 14, Map 71B, Group D, Control Map 71B,	)	
	Parcel 14P	)	Putnam County
	Commercial Personal Property	)	
	Tax year 2006	)	

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued for tax purposes as follows:

APPRAISAL	ASSESSMENT
\$112,900	\$33,870

On October 19, 2006, the taxpayer filed an appeal with the State Board of Equalization ("State Board").<sup>1</sup>

The undersigned administrative judge conducted a hearing of this matter on February 27, 2007 in Cookeville. The taxpayer was represented by Adrian Castro. Putnam County Assessor of Property Rhonda Chaffin was assisted by personal property specialist Sandra Freeman and Sonya Bowling-Brown, of the State Division of Property Assessments (DPA).

Findings of Fact and Conclusions of Law

This appeal pertains to a small bookstore that recently opened at 106 East Commercial Avenue in Monterey. On November 29, 2005, the Assessor discovered the issuance of a business license in the name of "Libreria Cristiana Monte Horeb" for this establishment. Hence she assigned a new personal property account to the business. When the taxpayer failed to return the required tangible personal property schedule to her office by the March 1, 2006 deadline, the Assessor levied a "forced assessment" on the account in the amount shown above. Apparently on the recommendation of a firm (Tax Management Associates) under contract with the Putnam County Commission, this assessment was based on a statewide average appraised value of tangible personal property used in the operation of bookstores which had been randomly selected for audit.<sup>2</sup>

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<sup>1</sup>The appeal was filed electronically. The notarized appeal form and required fee were received by the State Board on November 14, 2006.

<sup>2</sup>Due to a typographical error, Ms. Chaffin testified, the forced appraised value (\$112,900) was actually \$10,000 less than it was intended to be.



Prior to May 20, 2006, the Assessor mailed notice of the forced assessment to the mailing address shown on the taxpayer's business license (P.O. Box 713, Monterey, TN 38574). This notice included instructions for contacting the Assessor's office regarding the assessment.

On the mistaken belief that this assessment related to the leased *building* in which his bookstore was located, Mr. Castro paid little heed to the notice. Not until he received the ensuing personal property tax bill in early October did he inquire and learn the nature of the personalty assessment. By then, unfortunately, the Putnam County Board of Equalization had completed its regular annual session and adjourned. Having no other possible recourse, Mr. Castro filed this appeal with the State Board.

Article II, section 28 of the Tennessee Constitution states that "all property real, personal or mixed shall be subject to taxation" unless exempted by the legislature. State Board Rule 0600-5-.04(1) requires the assessor to furnish "every potential commercial and industrial personal property taxpayer on or before February 1" with a form for the listing of all tangible personal property used (or held for use) by such taxpayer in its business or profession. The assessor is obliged to make a forced assessment against any taxpayer who fails to complete and return the required schedule by March 1.<sup>3</sup> Tenn. Code Ann. section 67-5-903(c). A taxpayer who is aggrieved by a forced assessment has a right of appeal to the local and state boards of equalization; however, Tenn. Code Ann. section 67-5-1412(b)(1) provides that:

The taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508.

In 1991, the Tennessee General Assembly enacted an amendment which affords a taxpayer the opportunity for a hearing to demonstrate "reasonable cause" for failure to contest an assessment before the county board of equalization. Tenn. Code Ann. section 67-5-1412(e). The Assessment Appeals Commission, appointed by the State Board under authority of Tenn. Code Ann. section 67-5-1502, has declared that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of the "reasonable cause" provisions to waive these requirements except where the failure to meet them is due to **illness or other circumstance beyond the taxpayer's control...**[Emphasis added.]

Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), pp. 2—3.

Regrettably, while the current appraisal may far exceed the actual value of the personal property used in the taxpayer's business on January 1, 2006, the administrative judge cannot

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<sup>3</sup>Among the factors which an assessor is supposed to consider in determining the amount of a forced assessment are "data from comparable accounts." State Board Rule 0600-5-.06(5)(b).



recommend acceptance of this direct appeal. There is no genuine dispute that the required assessment change notice was sent to the taxpayer's correct address in a timely manner. The administrative judge does not doubt that the appellant, who is of Hispanic origin, honestly misapprehended the import of the notice. Nevertheless, absent any indication that such notice was insufficient or misleading, Mr. Castro's failure to seek relief before the county board of equalization cannot legitimately be attributed to a "circumstance beyond the taxpayer's control."

Like other administrative agencies, the State Board has only such powers and duties as are delegated to it by the legislature. To whatever extent, then, a taxpayer's right of appeal to the State Board is conditioned on compliance with deadlines or other statutory requirements, this agency must abide by such limitations. Accordingly, the Tennessee Attorney General has opined that:

The requirement that a taxpayer must generally file an appeal with the local board of equalization before proceeding with an appeal to the State Board of Equalization, like the time deadline for filing an appeal, is a jurisdictional prerequisite which cannot be waived by the consent of the parties.

Tenn. Atty. Gen. Op. 92-62, p. 10.

#### Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.



This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 28<sup>th</sup> day of March, 2007.



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PETE LOESCH  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

cc: Adrian Castro, Libreria Cristian Monte Horeb  
Rhonda Chaffin, Putnam County Assessor of Property

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